

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: 47 HARBOR ROAD, LLC / PJ PAULEY

(Case No. 11891)

A hearing was held after due notice on December 12, 2016. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard and rear yard setback requirements.

Findings of Fact

The Board found that the Applicant is seeking a variance of 0.6 feet from the thirty (30) feet front yard setback requirement for an existing dwelling, a variance of 11 feet from the thirty (30) feet front yard setback requirement for an existing set of steps, a variance of 18.2 feet from the twenty (20) feet rear yard setback requirement an existing structure, a variance of 16.5 feet from the twenty (20) feet rear yard setback requirement for an existing trash enclosure, a variance of 17 feet from the twenty (20) feet rear yard setback requirement an existing structure, a variance of seven (7) feet from the twenty (20) feet rear yard setback requirement for an existing structure, and a variance of 13.5 feet from the twenty (20) feet rear yard setback requirement for a proposed addition. This application pertains to certain real property located on the west side of Harbor Road approximately 505 feet south of Holly Road (911 Address: 47 Harbor Road, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-8.17-154.00.

1. The Board was given copies of the Application, pictures of the Property, an aerial photograph of the Property, a portion of the tax map of the area, and a survey of the Property dated September 26, 2016.
2. The Board found that the Office of Planning & Zoning received no letters of opposition to the Application and one (1) letter of support to the Application.
3. The Board found that Matthew Toback was sworn in to testify about the Application.
4. The Board found that Mr. Toback testified that the Property is unique since the entire complex is non-conforming.
5. The Board found that Mr. Toback testified that the Applicant is adding a handicap bathroom for his son and there was no other option to add the handicap bathroom to the unit.
6. The Board found that Mr. Toback testified that the Property cannot be otherwise developed since the structures have existed prior to the Sussex County Zoning Code. He believes the unit was constructed in the 1950s.
7. The Board found that Mr. Toback testified that the difficulty has not been created by the Applicant.
8. The Board found that Mr. Toback testified that the variance will not alter the essential character of the neighborhood. Other units in the community have made similar additions and neighboring properties have been developed in a similar fashion.
9. The Board found that Mr. Toback testified that the proposed addition will be directly below the existing second floor deck and not extend any farther into the setback requirement than the existing footprint of the structures.
10. The Board found that Mr. Toback testified that the original building and the second floor deck are partially located in the setback area.

11. The Board found that Mr. Toback testified that the variances requested are the minimum variances necessary to afford relief.
12. The Board found that no parties appeared in support of or in opposition to the Application.
13. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found credible, persuasive, and un rebutted, the Board determined that the application met the standards for granting a variance. The findings below further support the Board's decision to approve the Application.
 - a. The Property is unique due to its unique size and history. The Property is an exceptionally narrow lot consisting of only 2,067 square feet. The Property was originally developed prior to the enactment of the Sussex County Zoning Code and the townhouse and related structures encroach into the front yard and rear yard setback areas. The unique characteristics of this Property limit the buildable area available to the Applicant and have created an exceptional practical difficulty for the Applicant who seeks to retain an existing townhouse and related structures and to build a reasonable addition for his handicapped son. The situation is also unique because the Applicant reasonably believed the community was developed prior to the enactment of the Sussex County Zoning Code and other homes in the neighborhood also encroach into the setback areas.
 - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique size and the buildable area thereof is limited due to its size. The Applicant seeks to retain an existing townhouse and related structures and to construction an addition of a reasonable size but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow a reasonably sized townhouse and related structures to remain on the Property and for the Applicant to construct a reasonable addition which will extend no farther than the existing second floor deck. The Board is convinced that the shape and location of these structures are also reasonable, which is confirmed when reviewing the survey and pictures provided by the Applicant.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual size of the Property. The unique lot size has resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. Furthermore, the townhouse and related structures were placed on the Property many years ago and have been in their present location since at least the 1950s. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created the lot's unique characteristics. Additionally, an exceptional practical difficulty has arisen due to the need for a handicap accessible bathroom for the Applicant's disabled son.
 - d. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the existing townhouse and related structures as well as the proposed addition will have no effect on the character of the neighborhood. The townhouse and related structures have been on the Property for many years as the Property was originally developed in the 1950s. Despite the longstanding locations of these structures, no complaints were noted in the

record about the locations of the structures. Rather, a letter of support was received from the homeowners association. Likewise, the proposed addition is similar in nature to other additions in the neighborhood as the addition will be placed underneath an existing second floor deck. The addition will extend no farther than the deck. Furthermore, no evidence was presented which would indicate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.

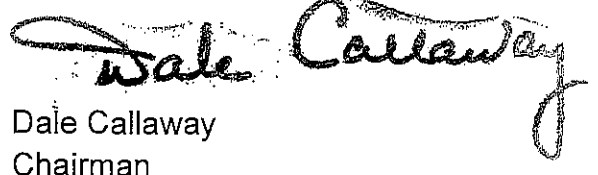
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain the existing townhouse and related structures on the Property and to build a reasonably sized addition for the Applicant's disabled son. The Board is convinced that the Applicant has explored other options for the addition and has sought to minimize the intrusion of the addition into setback areas.
- f. The Board also finds that the Applicant's son suffers from a disability and that the variance approval for the proposed addition represents a reasonable accommodation.

The Board granted the variance application finding that it met the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was approved. The Board Members in favor of the motion were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


Dale Callaway
Chairman

If the use is not established within one (1)
year from the date below the application
becomes void.

Date 2/7/2017